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1938

Department of Revenue

OFFICE Board of Revenue

STATION Madras

Ms. **No.** 591

2266/38

Dated 22.2.38

Pages in the file

(SUBJECT.)

Village Establt (S. Kanara) Coondapoor Tk. Kalthod village Karnam - Reinstatement after suspension - Claim for back pay - Petn. Dismissed.

D.Dis.6205-37. South Kanara Collector's Office,

Mangalore, dated 6th January '38.

RP 135 6266

From

M.R.Ry. Rao Bahadur M.V.Vellodi, Avl., B.A.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Village Officers - (South Kanara District) - Coondapoor Taluk - Kalthod village - Karnam - Reinstatement after suspension - claim for back pay - second appeal to Board -submitted.

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M.S-13 of I submit herewith the second appeal petition of K. Rama Rao karnam of Kalthod village, Coondapoor Taluk addressed to the Board of Revenue.

19 of (V) 2. The second appeal is against my order on his first appeal, J.Dis. 4277/37 dated 2-9-37. In the Judgment 10 of (T) in O.S. 519/33 on the file of the District Munsiff of Coondapoor, the District Munsiff passed strong remarks against the appellant (Shanbhogue) and the Potail of the village that they created and forged a document filed as Exhibit C in the said suit. The District Munsiff sent a copy of his judgment to the Collector who sent it to the Sub Collector. The Sub Collector got enquiries made through the Tahsildar. As he was satisfied that the appellant and the Potail clearly committed an offence of forgery under 4 19-20 of 37 (T) Section 467 I.P.C. he placed both under suspension from 1-7-1935 pending the investigation and the disposal of the Criminal case to be launched against them. On receipt of the records of the Police investigation, the Sub Collector as Joint Magistrate took cognizance of the offence under section 190 (1) (c) C.P.C. and transferred the case to the Stationary Sub Magistrate, Coondapoor, on 19-10-35. During

the pendency of this case the petitioner and also the Potail filed a revision petition No. 867/35 praying the High Court to revise the said order of the Joint Magistrate. The High Court having ordered stay of proceedings till the final ---- disposal of the Criminal Revision Petition, the petitioner applied to the Sub Collector praying for permission to join duty. The Tahsildar recommended it so that the Sub Collector restored the petitioner to duty in his Proceedings Ref. C. 2251-36 dated 5-5-36. Subsequently on receipt of the order of the High Court dismissing the Criminal Revision Petition in C.R.C. 938/35 dated 5-5-36, the Sub Collector cancelled the order of restoration and placed the petitioner again under suspension pending disposal of the Criminal case against him in his Proceedings D.Dis. 2251-36 dated 15-5-1936. Ex.17-18 of (J)

3. In the meantime it was found that the petitioner and the Potail were guilty of misappropriation of some ------ Government collections when they were on duty and in that connection the Sub Collector suspended both for six months with a direction that the suspension be merged with the period they were already undergoing in connection with the R.C.case. Please see his Proceedings D.Dis.4262-36 dated 30-8-36 which were also confirmed by the Collector in appeals in his Proceedings D.Dis. 5283-36 dated 26-11-36. Ex.137-139 of (Y) Ex.141 of (Y)

4. The Stationary Sub Magistrate, Coondapoor who held the preliminary enquiry in the R.C.case No. 4 of 1935 discharged the petitioner, the Potail and another accused under section 209 (1) C.P.C. in his order dated 27-11-1936 by holding that the prosecution had not made out a prima facie case against them. In view of this discharge order, the Tahsildar recommended in his Ref.A4-8325-36, dated 30.11.1936 that the petitioner and also the Potail might be permitted to rejoin duty. The Sub Collector passed orders accordingly in his Ref.C.No. 7382/36, dated 10.12.1936 so that the petitioner rejoined duty on 11.12.1936. The total period of suspension of the petitioner deducting the period of six months was thus 10 months and 28 days. Ex.31 of (T)

5. The petitioner filed his application, dated 31.5.1937

claiming back pay for this period on the ground that he was honourably discharged and that therefore he was entitled to it under the rules. The Sub Collector, however, declined to hold that the petitioner's discharge was an honourable one in view of the fact that the Dt. Munsiff's judgment clearly showed that the village officers were guilty of forging the document. He therefore refused to grant the petitioner's request in his Proceedings, D.Dis.3608/37, dated 27.6.1937.

6. The petitioner thereafter appealed to me against the Sub Collector's order contending that the discharge was an honourable one as would be clear from the discharge order, that his suspension was uncalled for and that therefore he was entitled to the back pay. The Sub Collector having offered his remarks, L.Dis.5106/37, dated 21.8.1937 that the petitioner's case did not fall under the provisions of Rule 54 of the Fundamental Rules on account of the clear finding of the District Munsiff in the judgment in O.S.519/33 that the document written and produced by the petitioner in the suit was a deliberate forgery and concoction, I agreed with the Sub Collector and dismissed the petitioner's appeal in my, L.Dis.4277/37, dated 2.9.1937.

7. The petitioner has now submitted this second appeal addressed to the Board of Revenue. I am not sure whether there is a second appeal in this matter. I have not been able to trace out any order in the matter of pay. I am, therefore, submitting the appeal petition for the orders of the Board.

8. The present appeal does not contain any new facts calling for remarks. There can be no doubt that the petitioner's case cannot come under the provisions of Rule 54 of the Fundamental Rules for the reasons given by the Sub Collector with whom I agree. Village officers are not entitled to leave with pay or pension, nor are they entitled to subsistence allowance while under suspension. They cannot, therefore, claim any allowances or remuneration while they are not actually on duty.

9. I enclose the records noted in the margin ⊗ for favour of reference.

1. Huzur L.Dis.4277/37, dated 2.9.37.
2. Coondapoor Sub Collector's L.Dis. 3608/37, dated 27.6.37.
3. Huzur D.Dis.5983/36, dated 26.11.36.
4. Coondapoor Sub Collector's D.Dis. 4262/35, dated 30.8.36.
5. Records of R.C.4/35 on the file of Stationary Sub Magistrate, Coondapoor.
6. Coondapoor Sub Collector's D.Dis.2251/36, dated 15.5.36.
7. Do. D.Dis.1955/35, dated 20.6.35.

For Collector.

8.1.

8.1.

2/
28/10/37

To

The Honourable the Board of Revenue,

Land Revenue,

BOARD OF REVENUE

Madras.

Through

1. The Tahsildar of Coondapoor,
2. The Sub Collector of Coondapoor, and
3. The Collector of South Kanara District.

Humble appeal petition of K.Rama Rao, Karnam of Kalthod village, Coondapoor Taluk, South Kanara District.

dated 27th October 1937.

Most Respectfully sheweth as follows:

Being highly aggrieved by the South Kanara Collector's order L.Dis. 4277/37 dated 2. 9. 1937 dismissing the petition of the appellant for back pay, the appellant has been obliged to approach the benign Board of Revenue with the hope that justice would be done to him here at least.

2. The Collector's order opposed to rules, equity and the facts of the case.

3. For a clear and proper understanding by the Board of Revenue, the appellant has briefly stated below the facts of the case.

4. In O. S. No. 519/1933 on the file of the District Munsif, Coondapoor, the appellant was summoned by the Court to produce a document which was with him. This document was

an agreement entered into between one Manja and his siste
Manji of Kalthod Village. It was written by the appellant o
26.8.1932 as a document writer and attested by two witnesses
viz: Nandiappa Shetty, Potail of Kalthod Village and Laxmana
Shetty of Golihole Village. After executing the document,
the executants disagreed as to its terms and the document wa
not got registered at all. It was lying with the appellant,
the executants did not take it from him. According to the
District Munsiff's summons the appellant produced it in the
court on 22.3.1935. The District Munsiff held that the docun
was a forged document and referred the matter to the - -
Revenue department. The Sub Collector at once placed the
appellant and the potail under ad interim suspension and
ordered the police to investigate the matter. The police
reported that they could not take any action without the
District Munsif's sanction for prosecution. The District
Munsif refused to grant sanction and said that he referred
the matter to the Revenue Department, not for Criminal prose-
cution, but for taking departmental action. In spite of this
the Sub Collector, as Joint Magistrate, took cognizance of
the offence under section 190 (i) of the Criminal Procedure
Code and sent the case to the Stationary Sub Magistrate,
Coondapoor on 19.10.1935 for disposal according to law. The

The Sub Magistrate after enquiry discharged all the accused on 27.11.1936. The appellant and the potail were restored to their posts in Sub Collector's order Ref.C.No.7382/36 dated 10.12.1936. The appellant then applied to the Sub Collector to order payment of the back pay due to the appellant for the period of suspension. He rejected the petition in his order L.Dis. 3608/37 dated 27- 6- 1937. The appellant then appealed to the Collector who was also pleased to reject the petition. Hence this appeal to the Hon'ble Board of Revenue.

5. The Collector's order merely states that the petition has been rejected. It does not state any reasons for the rejection. This means that the Collector has upheld the reasons given by the Sub Collector for rejecting the appellant's claim. The Sub Collector's reasons are: (1) that he is not prepared to hold that the appellant's discharge from the Criminal case was an honourable one, and (2) that the Sub Magistrate did not have sufficient evidence before him to bring home the offence. A perusal of the Sub Magistrate's order is kindly solicited The Sub Magistrate' - remarks that there was not even a prima facie case against the accused. The Board may be pleased to judge whether the discharge under such circumstances was not an honourable

one although the Sub Magistrate has not expressly stated it in so many words. The whole forgery case depended upon the evidence of Manji (female) who denied that she had put her marks on the document in question. Her evidence before the court abounds in such absurdities and falsehoods that the Sub Magistrate rightly concludes that it was very unsafe to rely on her evidence. If her evidence were to be believed the Sub Magistrate remarks her own husband and a vakil of the District Munsif's Court would have to be prosecuted for forgery. There is absolutely no other evidence to support the theory of forgery. The appellant and the two other accused did not adduce any evidence in their defence. The discharge was due to the failure of the prosecution to prove a prima facie case. If the discharge under these circumstances cannot ~~be~~ classed as an honourable discharge, the appellant fails to understand what other discharges can be called so.

6. Another reason of the Sub Collector for rejecting the appellant's claim by holding the discharge order was not proper is that the Sub ~~Collector~~ Magistrate did not have sufficient evidence before him to bring home the offence. The prosecution was launched at the instance of the Sub Collec in his capacity as Joint Magistrate. He had before him the

records of the departmental enquiry for several months before he took cognizance of the offence. It was clearly his duty to have seen before taking cognizance of the offence whether there was sufficient evidence. If there was not, he should have attempted to secure more evidence, and if that was not possible, he should not have taken cognizance of the offence at all. Eight witnesses including four ~~vakils~~ respectable vakils of the District Munsiff's Court and a court witness had been examined at the preliminary enquiry. The prosecution was conducted by the expert police prosecuting staff. It could have brought to the notice of the Joint Magistrate that the evidence was not sufficient. To say now, after the whole affair has terminated, that the Sub Magistrate did not have sufficient evidence before him seems very curious. Certainly, the accused were not responsible for this. Immediately the Sub Magistrate discharged the accused, the Joint Magistrate seems to have called for the records of the case for perusal. If the Joint Magistrate had thought that the Sub Magistrate did not have sufficient evidence or whether the ends of justice had suffered by the discharge order, he was at liberty to move higher authorities to order a re-trial. He however did not do so. From these facts the Board of

Revenue may be pleased to see that both the reasons of the Sub Collector for rejecting the appellant's claim are quite unsound and that the orders of both the Sub Collector and the Collector are unjust.

7. The most important point for consideration in this case is whether the ad-interim suspension of the appellant was necessary and justifiable. The appellant submits that the first thing to be done before holding a document as forged is to examine the party who denies having signed it and to weigh the other available evidence with an impartial mind to judge the probabilities of the case. In this case the District Munsif did not examine Manji(female) or her brother, the other executant. He relied solely upon the statement of Manji's husband. Manji was summoned thrice; but she evaded appearing in the District Munsif's Court on very silly grounds. This circumstance alone should have roused the District Munsif's suspicion about his theory of forgery. As for the Sub Collector (Joint Magistrate) he has also not personally examined her. He relied upon the enquiry by the Tahsildar; but the Tahsildar also had not examined her. Upon such incomplete and purfunctory enquiry the Sub Collector thought fit to place the appellant on suspension and allowed .....

- him -

him to be so for nearly a year-and-a-half. Even after the District Munsif refused to sanction prosecution, the Sub Collector did not consider whether it was necessary to allow the appellant to be under suspension. The Sub Collector placed the appellant and the potail on suspension fearing that, if they were on duty, they might tamper with the evidence. What useful evidence there was in the case the Sub Magistrate's order will amply show. Even after keeping the Village Officers out of employment, the prosecution miserably failed. When the evidence against the appellant and the Potail was so flimsy and unsatisfactory, the proper and reasonable course for the authorities was to keep them in service until the preliminary enquiry by the Sub Magistrate was over and to suspend them, if necessary, when they were committed to the Sessions Court, in which case no claim for back pay would have arisen at all. The Appellant submits that during the preliminary enquiry, the appellant filed a Revision Petition before the High Court against the District Magistrate's order refusing to transfer the case to some other court beyond the jurisdiction of the Joint Magistrate, Coomlapoor. He also applied to the High Court for stay of further proceedings; when the stay was granted the Sub Collector allowed the appellant to join duty; but when the High Court rejected the Revision Petition, the Sub Collector again placed the appellant under suspension after he was about 20 days in service. Why was the appellant allowed to join duty for 20 days?

Had the circumstances which necessitated his suspension in the first instance changed since? Was there no fear that he would tamper with the evidence? If there was no such fear why was he again placed under suspension when the High Court rejected the Revision Petition? What influence would the petty village Officers have exercised to tamper with the evidence when the Sub Collector, the Tahsildar and the Police were against them? And after all, what was the result of the case even after the village officers were kept out of employment for about a year and a half? These are some of the points to be taken into consideration by the Board of Revenue in deciding whether the keeping of the appellant out of employment was necessary in any aspect of the case. And now when the appellant claims his back pay the Sub Collector consoles the appellant by saying that the period of suspension will be treated as leave on loss of pay--- a poor consolation indeed to the appellant who had to suffer much worry, hardship and loss on account of the unwarranted suspension and unjustifiable criminal prosecution. The appellant trusts for all the above reasons that he is lawfully and equitably entitled to the salary which he claims. He also learns that even in worst cases such concessions have been granted.

8. The appellant therefore prays most humbly and respectfully that the benign Board of Revenue may be graciously pleased to set aside the orders of the Sub Collector and the Collector of and to order payment

to the appellant his back pay for the period specified by him in his application to the Sub Collector.

For which act of benevolence and justice the appellant will ever remain grateful,

K Ramarao

Appellant-Petitioner.

Enclos: Collector's order d/2.9.1937
No.L.Dis.4277/37.

L.Dis.No.4277/37.

Proceedings of the Collector of South Kanara, dated the 2nd September 1937.

H.H.Ry. Rao Bahadur M. V. Vellodi, Avl.,B.A.

Village Officers - Coondapoor Taluk - Kalthod village - Karnam - suspension for mis-conduct in M.C.4/35 on the file of Stationary Sub Magistrate, Coondapoor - subsequent re-instatement-claim for back pay - Petition rejected.

Petition of K. Rama Rao, shanbhogue of Kalthod village, received with Coondapoor Sub Collector's remarks, L.Dis. 5106/37, dated 21.8.1937 and the connected records.

The petition is rejected.

(By Order)

Huzur Sheristedar. 4.9.37

Noted 4.9.37)

To the petitioner through the Tahsildar of Coondapoor.

Copy to the Sub Collector, Coondapoor with records (1) L.Dis. 3608/37 and (2) D.Dis.1955/35.

L. Dis 4801-37

Forwarded to the petr K. Rama Rao, shbg of Kalthod village

for Tahsildar 7/9/37

6/9

21-9-37.

[Mr 9 F 14]

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying		
When copied		
When examined		
When signed		
When despatched.		

SUBJECT :— Village Establt - (S. Kanara) Coondapoor Kalthod village - Kannam - Reinstatement after suspension - Claim for back pay - Petition - Dismissed

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

No. _____ From the Petition from the Kannam of Kalthod village Coondapoor Tk dated 27.10.37 in 5-13 of Q

" C 266/38 " Collr of S. Kanara " DDis 6205/37 6/1/1938 in 1 of Q to Collr only

" _____ " _____ " _____ " _____ 19____.

~~Order~~ Resolution ~~(Ms.) Rout.~~ No. 591, dated 22. 2. 1938

No appeal lies to the Board.

The petition is dismissed.

21/2/38

22/2/38

To

The Petitioner

MRRy L. Rama Rao Pantulu

Kannam of Kalthod village

Coondapoor Tk.

The Collr of S. Kanara

with ~~acknowledgt~~ records as per list.

(By regd post)

List at p 4 of

Plaskrecton

sent herewith

MR

No. 014

For Insurance Notices see reverse.
Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgement is due.

Rs. 1 As 0
Date-stamp.

Received a registered *

addressed to

* Write here "letter," "postcard," "packet" or "parcel" with the word "Insured" before it when necessary.

Initials of Receiving Officer.

If insured.

Insured for Rs. (*in figures*) (*in words*)

Insurance fee Rs. As. (*in words*).

Weight / *Rates*
Tolas

Name and address of sender.

JS (A)
AS (LR)
Through Section
10.2.38 1/42

Village Estts - (S. Kanara) Coondapoor Tu - Kalkod village - karnam - Reinstatement after suspension - Claim for back pay - Second appeal

C 266/38 From the Collr of S Kanara

Di-Dis. 6205/37 d 6.1.38

To AS (LR)

Please see the petition at pp 5-13 and the Collr's letter at pp 1-4 cp.

2) The petition is against the Collr's order No L Dis 4277-37 d 2.9.37 rejecting the claim preferred by the petitioner for back pay during the period he was suspended by the Sub Collr. The Sub Collr who cancelled the order of suspension and allowed the petitioner to join duty considered that the period of suspension should be treated as on loss of pay leave. Against this order the petitioner appealed to the Collr of S. Kanara. There is no provision for second appeal in such cases.

3) According to note 3 to article 49 of the S.F Code the authority restoring the village officer on appeal should decide whether he should receive any pay during for the period he was out of employ. On this analogy the Sub Collr decided the question and the Collr in appeal rejected

the petitioner's claim. Thus even on merits the petitioner has no case. The petitioner may be informed that no second appeal lies to the Board and the petition may be rejected.

4/2/38 — 6.2.38 — J.S. (AJ)

Whatever be the circumstances in which the petitioner was kept out of office a village officer cannot get pay for the period he is not actually on duty. The petition may be dismissed

18.2.38

M.I. — Dismissed

To A S (LR)

Draft submitted.

21/2/38 — 22.2.38